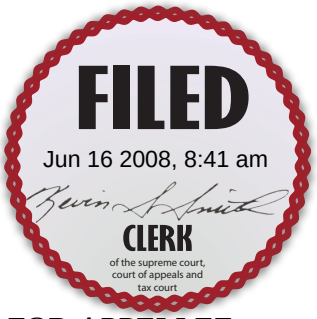

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IN THE
COURT OF APPEALS OF INDIANA

DONALD BAKER,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 48A02-0801-CV-53
	)	
CATHERINE IPOCK,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Stephen D. Clase, Judge
The Honorable Thomas Newman Jr., Judge
Cause No. 48D03-9304-DR-299

June 16, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Petitioner Donald Baker appeals the trial court's denial of his petition to modify his child support obligation. We affirm.

FACTS AND PROCEDURAL HISTORY

At some point prior to 1993, Baker and Catherine Ipock were married. On April 19, 1993, Ipock filed for divorce. Ipock was granted custody of the couple's two daughters, and Baker, who was unemployed at the time, was ordered to pay minimal child support. Since 1993, Baker's employment has been sporadic, and, as a result, his child support obligation has fluctuated. As of November 30, 2007, Baker, who is currently incarcerated,[1] was $22,179.79 in arrears of his child support obligation and was ordered to pay fifty dollars per week for his current child support obligation and ten dollars per week toward his arrearage. On December 11, 2007, Baker petitioned the court to modify his child support obligation. The trial court denied Baker's request. This appeal follows.[2]

DISCUSSION AND DECISION

Baker contends that the trial court erred in denying his petition to modify his child support obligation because of his incarceration. We disagree. Our standard of reviewing

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[1] Baker was convicted of Class A felony child molesting and was sentenced to forty-five years incarceration in the Indiana Department of Correction on September 27, 2007.

[2] The State is not directly representing Ipock in this matter but is representing its own interests because Ipock is a Title IV-D recipient. *See Collier v. Collier*, 702 N.E.2d 351, 355 (Ind. 1998). Title IV-D is a reference to the Child Support Enforcement Program of the Federal Social Security Act. *See* 42 U.S.C. §§ 601-680 (2006). Affiliation with the program requires a parent to assign to the state his or her rights to collect support payments. *See* 42 U.S.C. § 608(a)(3) (2006). Thereby, the State becomes an active participant in proceedings to collect child support.

child support awards is well-settled. *McGill v. McGill*, 801 N.E.2d 1249, 1251 (Ind. Ct. App. 2004). We will not reverse a child support order unless the determination is clearly against the logic and effect of the facts and circumstances. *Id*. When reviewing a child support order, we do not revisit weight and credibility issues but confine our review to the evidence, considering reasonable inferences favorable to the judgment. *Id*. The petitioning party bears the burden of proving the necessary change in circumstances to justify the modification of its child support obligation. *See Naville v. Naville*, 818 N.E.2d 552, 555 (Ind. Ct. App. 2004).

Baker claims that the trial court's denial of his petition to modify his child support obligation was in error because his income, while incarcerated, is merely five dollars a month and therefore his fifty-dollar-per-week child support obligation is unreasonable. In support of his claim, Baker relies on *Lambert v. Lambert*, 861 N.E.2d 1176, 1177 (Ind. 2007), in which the Indiana Supreme Court held that a trial court "should not impute potential income to an imprisoned parent based on pre-incarceration wages or other employment-related income." Baker's reliance on *Lambert*, however, is misplaced. In *Lambert*, the Supreme Court explicitly held that "incarceration does not relieve parents of their child support obligations." 861 N.E.2d at 1177. Further, in *Lambert*, the Supreme Court determined that adopting the non-imputation approach "allows courts to comply with the [Child Support] Guidelines by imposing at least the minimal support order as provided by Ind. Child Support Guideline 2." *Id*. at 1181.

Indiana Child Support Guideline 2 establishes that for obligors, such as Baker, "with a combined weekly adjusted income of less than $100, the minimum child support

award is normally within a range of $25-$50 weekly." Ind. Child Support Guideline 2. Indiana Child Support Guideline 2 Commentary provides that, "Even in situations where the noncustodial parent has no income, courts have routinely established a child support obligation at some minimum level." This Commentary further provides that, "An obligor cannot be held in contempt for failure to pay support when there is no means to pay, but the obligation accrues and serves as a reimbursement if the obligor later acquires the ability to meet the obligation."

Prior to Baker's incarceration, his child support obligation of fifty dollars per week was set to a minimal level due to his spotty employment history. Unlike the situation presented in *Lambert* where the trial court imputed Father's pre-incarceration income to him, here there is no evidence in the record that the trial court imputed any income to Baker. *See Lambert*, 861 N.E.2d at 1177. Baker has provided no evidence suggesting why the continuation of his minimal child support obligation was clearly against the logic and effect of the facts and circumstances. Baker claims that he "has been continuously harassed and punished for his poverty, his mental retardation and any resulting mental illness, his inability to read, and for his inability to maintain employment." Appellant's Br. p. 4. Baker, however, has failed to present any argument as to why his alleged mental retardation or his inability to maintain employment should excuse him from his obligation to support his daughters. Accordingly, because Baker's child support obligation is currently set at a minimal level and because Baker has failed to prove that the circumstances necessitate modification of his child support obligation, we conclude that the trial court did not err.

Furthermore, to the extent that Baker additionally challenges his alleged past conviction of felony nonsupport of a defendant, we note that this court lacks subject matter jurisdiction over cases that are not timely initiated. *Marlett v. State*, 878 N.E.2d 860, 864 (Ind. Ct. App. 2007), *trans. denied*. Unless a Notice of Appeal is timely filed, the right to an appeal shall be forfeited except as provided by Post-Conviction Rule 2.[3] Here, the trial court ordered that Baker be incarcerated for failure to pay child support on September 12, 2006. Baker was released from incarceration on October 31, 2006, after paying $2000 toward his child support arreaeage. At no time following his incarceration for failure to pay child support did Baker initiate a timely appeal. Further, Baker has not requested leave to file a belated appeal pursuant to Post-Conviction Rule 2. Because Baker did not timely initiate an appeal or request leave to file a belated appeal pursuant to Post-Conviction Rule 2, any challenge to his alleged past conviction of felony non-support is untimely, and therefore Baker has forfeited this claim.

The judgment of the trial court is affirmed.

BARNES, J., and CRONE, J., concur.

[3] Post-Conviction Rule 2 sets forth the circumstances under which a defendant may request a belated appeal.